

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KYLE ROBERT JAMES,

Plaintiff,

v.

BARBARA LEE, et al.,

Defendants.<sup>1</sup>

Case No.: 16-cv-01592-AJB (JLB),  
consolidated with 17-cv-00859-AJB  
(MDD)

**ORDER ON PLAINTIFF'S  
MISCELLANEOUS MOTIONS**

**[ECF Nos. 140; 142; 155]**

Before the Court are several miscellaneous motions filed by Plaintiff Kyle Robert James. For the reasons set forth below, Plaintiff's motion for copies (ECF No. 140 at 1–2), motion for additional interrogatories (ECF No. 142), and motion to exclude evidence (ECF No. 155) are **DENIED**, and Plaintiff's motion to compel (ECF No. 140 at 3–8) is **GRANTED in part and DENIED in part**.

**I. MOTION FOR COPY OF INTERROGATORIES**

Plaintiff requests that the Court direct the Clerk of Court to send him a free copy of the exhibits he attached to his motion to compel (ECF No. 140 at 10–16), which are

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<sup>1</sup> Defendant Mark Kania is the only remaining defendant in this case. Therefore, all references to "Defendant" in this Order are to Defendant Kania.

1 excerpts of Defendant's responses to his interrogatories. (*Id.* at 1.) Defendant provides in  
 2 opposition that he has since mailed a copy of the requested exhibits to Plaintiff. (ECF Nos.  
 3 143 at 1; 147 at 2.) Plaintiff's request is therefore **DENIED as moot**. Additionally,  
 4 although Plaintiff is proceeding *in forma pauperis* (ECF No. 3), he is not entitled to free  
 5 photocopies at the Court's expense simply because of his *in forma pauperis* status. The  
 6 statute providing authority to proceed *in forma pauperis*, 28 U.S.C. § 1915, does not  
 7 include the right to obtain court documents without payment. *See Sands v. Lewis*, 889 F.2d  
 8 1166, 1169 (9th Cir. 1990) (per curiam) (stating that prisoners have no constitutional right  
 9 to free photocopy services), *overruled on other grounds by Lewis v. Casey*, 518 U.S. 343,  
 10 350–55 (1996); *see also In re Richard*, 914 F.2d 1526, 1527 (6th Cir. 1990) (stating that  
 11 28 U.S.C. § 1915 “does not give the litigant a right to have documents copied and returned  
 12 to him at government expense”).

## 13                   **II. MOTION TO COMPEL**

14 Plaintiff moves the Court for an order compelling Defendant to provide further  
 15 responses to his Interrogatory Nos. 1, 7, 16, 18, and 19. (ECF No. 140 at 5–8.) Defendant  
 16 opposes Plaintiff's motion, and argues that the Court it should deny it as untimely and on  
 17 the merits. (ECF No. 147 at 2–4.)

### 18                   **A. Legal Standard**

19                   A party is entitled to seek discovery of any non-privileged matter that is relevant to  
 20 his claims and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Federal Rule  
 21 of Civil Procedure 33 provides that a party may serve on any other party interrogatories  
 22 that relate to any matter within the scope of discovery defined in Rule 26(b). Fed. R. Civ.  
 23 P. 33(a)(2). If a party fails to answer an interrogatory, or if the response provided is evasive  
 24 or incomplete, the propounding party may bring a motion to compel. Fed. R. Civ. P. 37(a).  
 25 “The party seeking to compel discovery has the burden of establishing that his request  
 26 satisfies the relevancy requirements of Rule 26(b)(1).” *Bryant v. Ochoa*, No. 07cv200 JM  
 27 (PCL), 2009 WL 1390794, at \*1 (S.D. Cal. May 14, 2009) (citing *Soto v. City of Concord*,  
 28 162 F.R.D. 603, 610 (N.D. Cal. 1995)). District courts have broad discretion to determine

1 relevancy for discovery purposes. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir.  
 2 2002). “Thereafter, the party opposing discovery has the burden of showing that the  
 3 discovery should be prohibited, and the burden of clarifying, explaining[,] or supporting  
 4 its objections.” *Bryant*, 2009 WL 1390794, at \*1 (citing *DIRECTV, Inc. v. Trone*, 209  
 5 F.R.D. 455, 458 (C.D. Cal. 2002)).

6 **B. Timeliness of Plaintiff’s Motion**

7 Defendant first argues that Plaintiff’s motion should be denied because it is untimely  
 8 per the Court’s Civil Chambers Rules, which provide that “[a]ny discovery disputes must  
 9 be brought to the Court no later than 30 calendar days after the date upon which the event  
 10 giving rise to the dispute occurred.” (ECF No. 147 at 2–3 (quoting J. Burkhardt Civ.  
 11 Chambers R. § IV.F.)) Defendant provides that he served a response to Interrogatory  
 12 No. 1 on July 2, 2018, a response to Interrogatory No. 2 on August 20, 2018, and responses  
 13 to Interrogatory Nos. 16, 18, and 19 on June 17, 2019, making Plaintiff’s motion  
 14 “extremely untimely.” (*Id.* at 3.)

15 The Court acknowledges that Plaintiff’s motion is more than a year late with respect  
 16 to Interrogatory Nos. 1 and 2 and approximately four months late with respect to  
 17 Interrogatory Nos. 16, 18, and 19. Moreover, Plaintiff was provided leave to reply to  
 18 Defendant’s opposition (ECF No. 145), yet he did not file a timely reply and has not  
 19 otherwise offered any justification for his delay in bringing the motion. The Court could  
 20 deny Plaintiff’s motion solely due to its untimeliness. However, the Court ordinarily warns  
 21 litigants of the consequences of failing to comply with Chambers Rules on discovery  
 22 disputes in its scheduling orders. As a scheduling order has yet to issue in this case, the  
 23 Court has not yet cautioned Plaintiff that he must comply with Chambers Rules. Taking  
 24 into consideration that this is Plaintiff’s first warning and that Plaintiff is a *pro se*,  
 25 incarcerated litigant, the Court will address Plaintiff’s motion on the merits.

26 **C. Merits of Plaintiff’s Arguments**

27 1. Interrogatory Nos. 1 and 7

28 Interrogatory Nos. 1 and 7 and Defendant’s responses thereto are as follows:

1                   *Interrogatory No. 1:*

2                   Why did you “hogtie” plaintiff Kyle James naked instead of putting clothes  
3                   on him first?

4                   *Response to Interrogatory No. 1:*

5                   Responding party objects to the interrogatory on the grounds that it is  
6                   vague and ambiguous as to time and the term “hogtie.” Responding party also  
7                   objects on the grounds that the interrogatory lacks foundation and assumes  
8                   facts. Specifically, the interrogatory incorrectly contends that Responding  
9                   Party “hogtied” Plaintiff and had Plaintiff “naked instead of putting clothes  
                 on him first.” Subject to and without waiving the foregoing objections,  
                 Responding Party responds as follows.

10                  Plaintiff has a long history of violent and disruptive behavior while in  
11                  custody, including: fighting with deputies, secreting tools to facilitate escape,  
12                  threatening to harm and kill deputies and other inmates, possessing makeshift  
                 weapons, failing to obey staff, and interfering with jail operations.

13                  On July 3, 2014, Plaintiff was found to have secreted a handcuff key  
14                  and a key used to unlock waist chains in his rectum, in a plot to escape  
15                  Sheriff’s custody. At the time Sheriff’s deputies made contact with Plaintiff  
16                  to investigate the unknown contraband he was hiding in his rectum, Plaintiff  
17                  was wearing only underwear. Plaintiff was strapped to a gurney by jail staff  
18                  so he could be x-rayed and to give him the opportunity to remove the  
19                  contraband himself. In order to do so safely and maintain the security of the  
20                  facility, Plaintiff’s underwear was removed and he was properly restrained.  
21                  Plaintiff initially refused to cooperate, threatened jail staff, and emphatically  
                 denied being in possession of any contraband. After approximately one hour,  
                 Plaintiff admitted to possessing keys and eventually retrieved both keys from  
                 his rectum.

22                  *Interrogatory No. 7:*

23                  In your response to Plaintiff[’s] Interrogatory No.1 (One), No.2 (Two),  
24                  No.3 (Three), and No.6 (Six) you state[,] “Plaintiff has a long history of  
25                  violent and disruptive behavior while in custody, including: fighting with  
26                  deputies, secreting tools to facilitate escape, threatening to harm and kill  
27                  deputies and other inmates, possessing makeshift weapons, failing to obey  
                 staff, and interfering with jail operations.” How is it possible that you could  
                 have known on 7/3/14 that Kyle James fought with deputies on 1/23/16 and

1 was found with on 2/24/15 what was alleged by deputies to be “Jail made  
 2 weapons”? (Which were events that took place after 7/3/14).

3 *Response to Interrogatory No. 7:*

4 Responding Party objects to the interrogatory on the grounds that it is  
 5 vague, ambiguous, and unintelligible so as to make a response impossible  
 6 without speculation as to the meaning of Plaintiff’s request. Responding Party  
 7 also objects to the interrogatory on the grounds that it lacks foundation and  
 8 assumes facts regarding the events and timeline of events referenced in  
 Responding Party’s prior discovery responses. Subject to and without  
 waiving the foregoing objections, Responding Party responds as follows:

9 Plaintiff has a long history of violent and disruptive behavior while in  
 10 custody. This includes threatening physical harm and death to jail staff and  
 11 other inmates prior to July 3, 2014.

12 (ECF No. 140 at 10–12.)

13 Plaintiff argues that Defendant’s response to Interrogatory No. 1 is “evasive and  
 14 deficient” because it is “perjured and impeachable.” (*Id.* at 5.) Plaintiff contends that as  
 15 of July 3, 2014, the date of the incident in this case, Defendant could not have known that  
 16 Plaintiff had a history of possessing makeshift weapons or fighting with other deputies,  
 17 because those events took place after July 3, 2014. (*Id.*) Plaintiff further argues that  
 18 Defendant’s responses to Interrogatory Nos. 1 and 7 are “so evasive” they are “tantamount  
 19 to no answers at all.” (*Id.* at 6.)

20 In opposition, Defendant argues that his responses to Interrogatory Nos. 1 and 7  
 21 included “appropriate objections to the argumentative phrasing and terminology” in the  
 22 interrogatories. (ECF No. 147 at 3.) Defendant further argues that, despite his objections,  
 23 he provided substantive responses, and “[t]he fact that Plaintiff does not like the answers  
 24 or disputes the factual contentions in the responses is not [a] ground to compel  
 25 supplemental responses.” (*Id.* at 3–4.)

26 The Court finds that, notwithstanding Defendant’s objections to Interrogatory  
 27 No. 1, he has sufficiently responded to it. Defendant’s response substantively addresses  
 28 //

1 Plaintiff's interrogatory, and as Defendant asserts, the fact that Plaintiff may not agree with  
2 the response does not render it deficient.

3 With respect to Interrogatory No. 7, the Court finds that, notwithstanding  
4 Defendant's objections, he has sufficiently responded to it. Defendant's response  
5 substantively addresses Plaintiff's interrogatory by stating that Plaintiff's "long history of  
6 violent and disruptive behavior while in custody . . . includes threatening physical harm  
7 and death to jail staff and other inmates prior to July 3, 2014." Again, the fact that Plaintiff  
8 may not agree with Defendant's response does not render it deficient.

9 Accordingly, Plaintiff's request to compel further responses to Interrogatory Nos. 1  
10 and 7 is **DENIED**.

11 2. Interrogatory No. 16

12 Interrogatory No. 16 and Defendant's response thereto are as follows:

13 *Interrogatory No. 16:*

14 As watch commander on date 7-3-2014 at GBDF during the handcuff  
15 key incident involving the Plaintiff Kyle James, you ordered the restraints to  
16 be applied to Kyle James in the fashion that was applied that day. Is it true it  
17 was you [sic] responsibility to ensure medical personal [sic] to be present  
18 during the retention and use of the restraint equipment used on Kyle James on  
19 7-3-2014 at least twice every thirty minutes, but as frequent as possible to  
20 ensure no unexpected health concerns or injuries occur?

21 *Response to Interrogatory No. 16:*

22 Responding Party objects to the interrogatory on the grounds that it is  
23 vague, ambiguous, compound, unintelligible, and therefore incapable of  
24 eliciting a meaningful response. Responding Party further objects that the  
25 interrogatory is irrelevant and not likely to lead to the discovery of admissible  
26 evidence because it lacks foundation as it incorrectly assumes a cord cuff  
27 restraint was applied to Plaintiff until he was transported to San Diego Central  
28 Jail and implies that Plaintiff required medical care. Subject to and without  
waiving the foregoing objections, Responding Party responds as follows:

29 Plaintiff has a long history of violent and disruptive behavior while in  
30 custody, including: fighting with deputies, secreting tools to facilitate escape,  
31 threatening to harm and kill deputies and other inmates, possessing makeshift

1 weapons, failing to obey staff, and interfering with jail operations. On July 3,  
 2 2014, Plaintiff was found to have secreted a handcuff key and a key used to  
 3 unlock waist chains in his rectum, in a plot to escape Sheriff's custody. To  
 4 safely secure Plaintiff and maintain institutional security, Plaintiff was  
 5 properly restrained to prevent him from attacking jail staff or destroying  
 6 evidence. After Plaintiff complained that his handcuffs were too tight,  
 7 deputies immediately checked his handcuffs and addressed the issue. Plaintiff  
 8 did not suffer any medical complications and he did not require medical  
 9 assistance at any point during the incident.

10 (ECF No. 140 at 13–14.)

11 Plaintiff argues that Defendant did not directly answer Interrogatory No. 16 and  
 12 “evasively ‘beats around the bush’ regarding the issue of” responsibility. (*Id.* at 7.) In  
 13 opposition, Defendant argues that he provided “specific objections to the interrogatory  
 14 given the argumentative phrasing and provided a substantive response,” in addition to  
 15 documents setting forth his “duties and responsibilities as watch commander.” (ECF No.  
 16 147 at 4.) Defendant further contends that “if Plaintiff wants an admission or denial, then  
 17 the proper discovery device to use would be a request for admission.” (*Id.*)

18 Defendant included various objections in his response to Interrogatory No. 16, but  
 19 does not specifically mention them or argue their merits in his opposition. Instead,  
 20 Defendant states merely that he “provided specific objections to the interrogatory given the  
 21 argumentative phrasing.”<sup>2</sup> (ECF No. 147 at 4.) The Court agrees with Plaintiff that

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22 <sup>2</sup> “When ruling on a motion to compel, a court ‘generally considers only those  
 23 objections that have been timely asserted in the initial response to the discovery request  
 24 and that are subsequently reasserted and relied upon in response to the motion to compel.’”  
*SolarCity Corp. v. Doria*, Case No.: 16cv3085-JAH (RBB), 2018 WL 467898, at \*3 (S.D.  
 25 Cal. Jan. 18, 2018) (quoting *Medina v. County of San Diego*, Civil No. 08cv1252 BAS  
 26 (RBB), 2014 WL 4793026, at \*8 (S.D. Cal. Sept. 25, 2014)); *see also Black Mountain*  
*27 Equities, Inc. v. Players Network, Inc.*, Case No.: 3:18-cv-1745-BAS-AHG, 2020 WL  
 28 2097600, at \*3 (S.D. Cal. May 1, 2020) (declining “to address Defendant’s objections  
 raised in its discovery responses because it did not reassert them within an opposition” to  
 the motion to compel (citing *SolarCity Corp.*, 2018 WL 467898, at \*3)). As mentioned,

1 Defendant's response does not directly answer Interrogatory No. 16. Although the Court  
2 agrees with Defendant that Interrogatory No. 16 is phrased as a request for admission, the  
3 Court does not find this to be an adequate basis in this case for Defendant to avoid  
4 answering the interrogatory, especially when it was propounded by a *pro se* litigant.  
5 Accordingly, Plaintiff's request to compel a further response to Interrogatory No. 16 is  
6 **GRANTED**, and Defendant is ordered to provide a supplemental response no later than  
7 September 11, 2020.

8       3.    Interrogatory No. 18

9       Interrogatory No. 18 and Defendant's response thereto are as follows:

10      *Interrogatory No. 18:*

11      Has an inmate in the custody of the San Diego Sheriff's Department  
12     ever went into medical distress while in restraint equipment resulting in  
13     serious bodily injury or death?

14      *Response to Interrogatory No. 18:*

15      Responding Party objects to the interrogatory on the grounds that it is  
16     vague, ambiguous, and overbroad. Specifically, the request is vague as to the  
17     terms "medical distress," "restraint equipment," and "serious bodily injury."  
18     The interrogatory is also improper because it seeks medical information of  
19     unrelated individuals and therefore violates third-party privacy rights.  
20     Responding Party further objects that the interrogatory seeks information that  
21     is irrelevant to the subject matter of this action, not reasonably calculated to  
22     lead to the discovery of admissible evidence, and not proportional to the needs  
23     of the case in light of the factors set forth in [the] Federal Rules of Civil  
24     Procedure, [R]ule 26(b)(1). Lastly, the interrogatory seeks information that  
25     calls for expert medical opinion.

26      (ECF No. 140 at 15.)

27      Plaintiff argues that he is "seeking a simple yes or no answer to" Interrogatory No.  
28      18. (*Id.* at 7.) In his opposition, Defendant stands on his objections that the request is "too

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26      Defendant does not argue in support of any of his specific objections. "Argumentative" is  
27     not an objection Defendant made in his discovery response. (*See* ECF No. 140 at 13.)  
28     Therefore, Defendant's objections are overruled.

1 vague and broad to provide a response" and contends again that Plaintiff is mistaken about  
2 "the proper discovery tool to use when seeking a 'simple yes or no answer.'" (ECF No.  
3 147 at 4.)

4 The Court agrees with Defendant and finds Interrogatory No. 18 vague and  
5 ambiguous as to the terms "medical distress" and "serious bodily injury" and overly broad  
6 as to time. Therefore, Defendant's objections are SUSTAINED. Further, although  
7 Defendant did not reassert his relevancy objection in his opposition, Plaintiff has not met  
8 his burden to show the relevancy of this request, and the Court cannot otherwise determine  
9 its relevance. Accordingly, Plaintiff's request to compel a response to Interrogatory  
10 No. 18 is **DENIED**.

11 4. Interrogatory No. 19

12 Interrogatory No. 19 and Defendant's response thereto are as follows:

13 *Interrogatory No. 19:*

14 What is your reason or excuse for not ensuring medical personal (sic)  
15 was present (as supposed to be in-line or in alignment with San Diego County  
16 Sheriff's Department Detention Services Bureau-Manuel of Policies and  
17 Procedures Number I.93 use of Restraint Equipment II Monitoring and  
Retention A-F (CSD000108-CSD00019) and/or page 1-2)?

18 *Response to Interrogatory No. 19:*

19 Responding Party objects to the interrogatory on the grounds that it is  
20 vague, ambiguous, overbroad, unintelligible, and therefore incapable of  
21 eliciting a meaningful response. Responding Party further objects that the  
22 interrogatory is irrelevant and not likely to lead to the discovery of admissible  
23 evidence because it lacks foundation as it incorrectly assumes a cord cuff  
24 restraint was applied to Plaintiff until he was transported to San Diego Central  
Jail and implies that Plaintiff required medical care. Subject to and without  
waiving the foregoing objections, Responding Party responds as follows:

25 Plaintiff has a long history of violent and disruptive behavior while in  
26 custody, including: fighting with deputies, secreting tools to facilitate escape,  
27 threatening to harm and kill deputies and other inmates, possessing makeshift  
weapons, failing to obey staff, and interfering with jail operations. On July 3,  
28 2014, Plaintiff was found to have secreted a handcuff key and a key used to

1 unlock waist chains in his rectum, in a plot to escape Sheriff's custody. To  
 2 safely secure Plaintiff and maintain institutional security, Plaintiff was  
 3 properly restrained to prevent him from attacking jail staff or destroying  
 4 evidence. Plaintiff did not suffer any medical complications and he did not  
 require medical assistance at any point during the incident.

5 (ECF No. 140 at 15–16.)

6 Plaintiff argues that Defendant's response to Interrogatory No. 19 does "not explain  
 7 why he did not have medical present during the 7-3-14 incident where . . . [P]laintiff was  
 8 in full restraints." (*Id.* at 8.) In his opposition, Defendant stands on his objections that the  
 9 interrogatory lacks foundation, for "it incorrectly states that a cord cuff restraint was  
 10 applied to Plaintiff" and "implies that Plaintiff required medical care." (ECF No. 147 at  
 11 4.)

12 The Court finds that, notwithstanding Defendant's objections, he has sufficiently  
 13 responded to Interrogatory No. 19. Defendant's response substantively addresses  
 14 Plaintiff's interrogatory by stating his reasons for not ensuring the presence of medical  
 15 personnel during the incident in question. Again, the fact that Plaintiff may not agree with  
 16 Defendant's response does not render the response deficient. Accordingly, Plaintiff's  
 17 request to compel a further response to Interrogatory No. 19 is **DENIED**.

### 18       **III. MOTION FOR ADDITIONAL INTERROGATORIES**

19 Plaintiff requests leave to propound more than twenty-five interrogatories on  
 20 Defendant. (ECF No. 142.) Defendant opposes Plaintiff's request. (ECF No. 147 at 5.)

#### 21       **A. Legal Standard**

22       Federal Rule of Civil Procedure 33 limits interrogatories to twenty-five per party,  
 23 including discrete subparts, but a court may grant leave to serve additional interrogatories  
 24 to the extent consistent with Rule 26(b)(1) and (2). Fed. R. Civ. P. 33(a). The twenty-five-  
 25 interrogatory limit is not intended "to prevent needed discovery, but to provide judicial  
 26 scrutiny before parties make potentially excessive use of this discovery device," and "[i]n  
 27 many cases, it will be appropriate for the court to permit a larger number of interrogatories  
 28 . . . ." Fed. R. Civ. P. 33 advisory committee's note to 1993 amendment. Generally, a

1 party requesting additional interrogatories must make a “particularized showing” as to why  
 2 additional discovery is necessary. *Roberts v. Hensley*, Case No.: 15cv1871-LAB (BLM),  
 3 2017 WL 715391, at \*2 (S.D. Cal. Feb. 23, 2017) (quoting *Ioane v. Spjute*, No. 1:07-cv-  
 4 00620-AWI-GSA, 2015 WL 1984835, at \*1 (E.D. Cal. Apr. 20, 2015)).

5 **B. Discussion**

6 Plaintiff argues that because the case is “complex,” good cause exists for leave to  
 7 propound more than twenty-five interrogatories. (ECF No. 142 at 4.) Plaintiff contends  
 8 that he must “prove” the following “prior to summary [judgment]”:

- 9 • Defendant’s lack of medical treatment was intentional;
- 10 • Defendant’s use of force was unreasonable and excessive;
- 11 • Defendant’s treatment of Plaintiff was degrading to human dignity;
- 12 • Defendant acted with a culpable state of mind;
- 13 • The deprivation of medical care was sufficiently serious;
- 14 • Defendant acted with reckless disregard for Plaintiff’s health and  
     safety;
- 15 • Defendant acted in bad faith and qualified immunity does not apply;
- 16 • Malice; and
- Knowledge

17 (*Id.* at 4–5.) Plaintiff further argues that, due to his incarceration, he “has no way to earn  
 18 the funds required to [d]epose” Defendant. (*Id.* at 6.)

19 In opposition, Defendant argues that Plaintiff has “failed to provide good cause to  
 20 justify additional interrogatories.” (ECF No. 147 at 5.) Contrary to Plaintiff’s assertion  
 21 that the case is complex, Defendant contends that the case is “very limited in scope,” as  
 22 “[i]t involves one defendant, one discrete incident on one day, and only two causes of  
 23 action.” (*Id.*) Defendant further contends that the interrogatories Plaintiff has already  
 24 propounded have been “argumentative, conclusory, and vague,” and Plaintiff “will likely  
 25 continue [this] pattern of conduct” if the Court grants him leave to serve additional  
 26 interrogatories. (*Id.*)

27 Good cause may exist to grant Plaintiff leave to serve additional interrogatories due  
 28 to his status as an incarcerated litigant proceeding *pro se* and *in forma pauperis*. However,

1 Plaintiff has not made the particularized showing necessary for the Court to grant his  
2 request. Plaintiff argues that the case is “complex” and lists several things he contends he  
3 must “prove prior to summary [judgment].” (ECF No. 142 at 4.) However, Plaintiff has  
4 not submitted any proposed interrogatories for review and does not provide what discovery  
5 he has already propounded, why that discovery is inadequate, and what topics remain that  
6 are necessary for him to explore by interrogatory. Plaintiff does not even specify the  
7 number of additional interrogatories he is seeking to propound on Defendant. Moreover,  
8 Defendant has moved to dismiss the 5AC, and the Court has recommended that  
9 Defendant’s Motion to Dismiss be granted in part. (ECF Nos. 144; 149.) Therefore, which  
10 of Plaintiff’s claims will survive dismissal, if any, and the issues in dispute in this case are  
11 not yet certain.

12 Although the Court agrees with Defendant that this case is not particularly complex,  
13 the Court will take into consideration Plaintiff’s status as a *pro se*, incarcerated litigant in  
14 any future motion for additional interrogatories Plaintiff files after Defendant’s Motion to  
15 Dismiss is decided. *See, e.g., McClellan v. Kern Cnty. Sheriff’s Office*, Case No. 1:10-cv-  
16 0386-LJO-MJS (PC), 2015 WL 5732242, at \*1 (E.D. Cal. Sept. 29, 2015) (“An  
17 incarcerated party’s highly limited ability to conduct a deposition in prison may contribute  
18 to a finding of good cause to file additional interrogatories.”); *McNeil v. Hayes*, No. 1:10-  
19 cv-01746-AWI-SKO (PC), 2014 WL 1125014, at \*2 (E.D. Cal. Mar. 20, 2014) (granting  
20 the *pro se* inmate plaintiff leave to serve additional interrogatories and reasoning that  
21 “depositions, which would relieve some of the pressure created by having to respond to  
22 [additional] interrogatories, are simply not a realistic option, as incarcerated pro se litigants  
23 are rarely in the position to conduct depositions”). In any future motion, Plaintiff should  
24 include his proposed interrogatories and state specifically why those additional  
25 interrogatories are necessary in light of the interrogatories already propounded on  
26 Defendant. Additionally, Defendant’s argument that Plaintiff will only continue his pattern  
27 of propounding “argumentative, conclusory, and vague requests” if granted leave to serve  
28 additional interrogatories is not well taken. Given Plaintiff’s *pro se* status, some

1 imprecision in his discovery requests can be expected. Accordingly, Plaintiff's request for  
2 additional interrogatories is **DENIED without prejudice**.

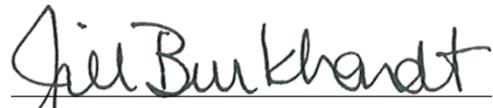
3 **IV. MOTION TO EXCLUDE EVIDENCE**

4 Finally, Plaintiff requests that the Court "permanently exclude the (all) statements  
5 by [D]efendant and his witnesses to refrain from claiming 'Plaintiff had a plot to escape,'  
6 due to the fact the [D]efendant has no evidence to support his claim of 'actual plan to  
7 escape.'" (ECF No. 155 at 1.) Plaintiff argues that, although he "had in his possession a  
8 handcuff key and master lock key," that "does not itself prove a 'plan' or 'plot' to escape  
9 as [D]efendant['s] counsel and [D]efendant keep claiming." (*Id.* at 2.) Plaintiff also  
10 requests the Court for an order compelling Defendant "to produce sufficient and reliable  
11 evidence to support [his] claim of 'plot'/'plan' to escape" and argues that "if [he] cannot  
12 produce sufficient evidence . . . then the [C]ourt should order the [him] to [a]mend his  
13 [M]otion to [D]ismiss." (*Id.*) Plaintiff also argues that Defendant "commit[ed] perjury" in  
14 his interrogatory responses by stating that "Plaintiff has a long history of violent and  
15 disruptive behavior while in custody." (*Id.* at 2–3.)

16 The Court will not address a motion to exclude evidence in a vacuum. Plaintiff may  
17 raise any appropriate objections to evidence proffered by Defendant<sup>3</sup> in the context of the  
18 proceeding at issue (such as at trial or in response to a motion for summary judgment).  
19 Accordingly, Plaintiff's motion (ECF No. 155) is **DENIED without prejudice**.

20 **IT IS SO ORDERED.**

21 Dated: August 31, 2020

  
22 Hon. Jill L. Burkhardt  
23 United States Magistrate Judge

24  
25  
26  
27 <sup>3</sup> Assertions in a pleading, except when sworn to under penalty of perjury, do not  
28 ordinarily constitute evidence.